

REMARKS

Claims 12, 13, and 16 stand rejected under 35 USC 102 as being anticipated by Montgomerie (GB 1042386). Claims 20 and 23 stand rejected under 35 USC 103 as being unpatentable over Montgomerie (GB 1042386) in view of Austin (US 4564537), or Brown (CH 286241). Claims 17 and 21 stand rejected under 35 USC 103 as being unpatentable over Montgomerie (GB 1042386) in view of Yazaki (US 3941087). Claims 18 and 22 stand rejected under 35 USC 103 as being unpatentable over Montgomerie (GB 1042386) in view of Yazaki (US 3941087), and further in view of Brown (US 5083606). Claim 24 stands rejected under 35 USC 103 as being unpatentable over Montgomerie (GB 1042386) in view of Yazaki (US 3941087), and further in view of Brown (US 5083606), in further view of Austin (US 4564537), or Brown (CH 286241).

Response to Rejections Under Section 102:

Applicant has amended claim 12 in response to Examiner's comments, which are appreciated. Claim 12 now claims in part "a second toxically acting layer arranged on a non-uppermost portion of the inside surface of the tube, **but not arranged on the uppermost portion** of the inside surface of the tube." Montgomerie teaches coating the surfaces of the tubes. Montgomerie makes no mention nor hints at coating only a portion of a surface. Thus, Montgomerie does not teach this aspect of Applicant's claim 12. Applicant respectfully requests the 35 USC 102 rejection of claim 12, and claim 13, which depends from and includes all the limitations of claim 12, based on Montgomerie, be withdrawn.

Applicant has amended claim 16 as well to now claim in part "a second toxically acting layer **limited to covering the non-uppermost portion of the inside surface of the tube.**" As argued above, Montgomerie teaches no such limitation. Applicant respectfully requests the 35 USC 102 rejection of claim 16, based on Montgomerie, be withdrawn.

Response to Rejections Under Section 103:

Claim 12 survives application of Montgomerie. Neither Austin nor Brown teach or suggest the limitations present in claim 12 that Montgomerie does not teach or suggest. Thus, claim 20, which depends from and includes all the limitations of claim 12, must also survive

application of *Montgomerie* and *Austin or Brown*. Applicant respectfully requests the 35 USC 103 rejection of claim 12, based on *Montgomerie* and *Austin or Brown*, be withdrawn.

Similarly, Claim 16 survives application of *Montgomerie*. Neither *Austin* nor *Brown* teach or suggest the limitations present in claim 16 that *Montgomerie* does not teach or suggest. Thus, claim 23, which depends from and includes all the limitations of claim 16, must also survive application of *Montgomerie* and *Austin or Brown*. Applicant respectfully requests the 35 USC 103 rejection of claim 16, based on *Montgomerie* and *Austin or Brown*, be withdrawn.

Regarding claim 17, *Yazaki* does not teach or suggest the limitations present in claim 16 that *Montgomerie* does not teach or suggest. Thus, claim 17, which depends from and includes all the limitations of claim 16, must also survive application of *Montgomerie* and *Yazaki*. Further, in claim 17 Applicant claims “the tube is arranged in the assembled heat exchanger such that the tube weld seam is located at the uppermost position of the tube cross section **when the tube is in operation.**” Applicant acknowledges that FIGS 2A-2C depict a tube with a seam at the top most position of the tube as oriented on the page. However, Applicant further notes that *Yazaki* describes these Figures simply as “cross section views of the steel pipe.” (Col. 4: 15-16). *Yazaki* references these figures while describing the process of manufacturing the tubes. (Col. 4:28 – Col 5.:14). Figure 1 discloses that during *Yazaki*’s manufacturing process, the seam does appear to be in the uppermost portion of the tube. However, *Yazaki*’s description and figures are limited to discussion of the manufacturing process. *Yazaki* does not teach or suggest anything related to the orientation of the tube “when the tube is **in operation.**” Thus, *Yazaki* does not teach or suggest this aspect of Applicant’s claim 17. Applicant respectfully requests the 35 USC 103 rejection of claim 17, and claim 21, which depends from and includes the limitations of claim 17, based on *Montgomerie* and *Yazaki*, be withdrawn.

Further, in claim 21 Applicant claims “the non-uppermost portion of the inside surface of the tube starts at the tube’s three o’clock position and ends at the tube’s nine o’clock position.” The non-uppermost portion is a limitation present in claim 16 which is not taught or suggested by *Montgomerie* and *Yazaki*. Thus, *Montgomerie* and *Yazaki* necessarily cannot teach or suggest the specific non-uppermost portion claimed in claim 21. Applicant respectfully requests the 35 USC 103 rejection of claim 21, based on *Montgomerie* and *Yazaki*, be withdrawn.

In claim 18 Applicant claims “a second toxically acting layer is arranged on the non-uppermost portion of the inside surface of the tube, **but not arranged on the uppermost portion of the inside surface of the tube.**” Montgomerie, Yazaki, and Brown do not teach or suggest this limitation. Applicant respectfully requests the 35 USC 103 rejection of claim 18, and claim 22, which depends from and includes all the limitations of claim 18, based on Montgomerie, Yazaki, and Brown, be withdrawn.

Further, in claim 22 Applicant claims “the non-uppermost portion of the inside surface of the tube starts at the tube’s three o’clock position and ends at the tube’s nine o’clock position.” The non-uppermost portion is a limitation present in claim 18 which is not taught or suggested by Montgomerie, Yazaki, and Brown. Thus, Montgomerie, Yazaki, and Brown necessarily cannot teach or suggest the specific non-uppermost portion claimed in claim 22. Applicant respectfully requests the 35 USC 103 rejection of claim 22, based on Montgomerie, Yazaki, and Brown, be withdrawn.

Claim 24 depends from claim 18. As argued above, Montgomerie, Yazaki, and Brown do not teach or suggest the limitations present in claim 18 that Montgomerie does not teach or suggest. Austin or Brown (CH 286241) do not teach or suggest the limitations that Montgomerie, Yazaki, and Brown do not teach or suggest. Thus, claim 24 survives application of Montgomerie, Yazaki, Brown, and Austin or Brown (CH 286241). Applicant respectfully requests the 35 USC 103 rejection of claim 24, based on Montgomerie, Yazaki, Brown, and Austin or Brown (CH 286241), be withdrawn.

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Conclusion

Applicants respectfully request reconsideration and allowance of the present application in view of the foregoing arguments. The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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